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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/630,141

07/30/2003

John J. Giobbi

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70243 7590 09/18/2007  
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EXAMINER
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YOO, JASSON H

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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09/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/630,141	Applicant(s) GIOBBI, JOHN J.	
	Examiner Jasson H. Yoo	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 75 and 78-101 is/are pending in the application.
- 4a) Of the above claim(s) 75 and 78-100 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 101 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/20/07 has been entered.

### ***Election/Restrictions***

Newly submitted claims 75, 78-100 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The original invention (claims filed on 11/9/06) is directed to a method of operating a gaming machine by detecting a passerby carrying a wireless portable data unit. Currently claim 101 reads on this invention.

Claims 75, 78-100 are directed to a method of operating the gaming machine at two different modes at the detection of two different distances of the user.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 75, and 78-100

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withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 101 is rejected under 35 U.S.C. 102(e) as being anticipated by

Hedrick et al. (US 6,908,387).

Hedrick discloses a method of operating a gaming terminal, comprising:

establishing a wireless transmission link with a portable data unit carried by an individual (cols. 5:56-6:6, 10:45-56, 17:44-18:2) when the portable data unit is within a predetermined distance of the gaming terminal (in front, up to about 10 meters, col. 10:64-67) for a predetermined period of time (Wireless transmission link is established when the gaming machine is turned on.

Furthermore, all wireless connections requires a predetermined time to establish a connection, even if the time is a split second, col. 11:1-5); and

modifying an operation of the gaming terminal differently depending upon at least one of the predetermined distance and the predetermined period of time

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(The gaming machine will operate into an attract mode when the portable data unit is in front of the gaming machine at a range where connection could be established, and when the gaming machine is turned on, col. 12:23-30).

### ***Response to Arguments***

Applicant's arguments filed 6/20/07 have been fully considered but they are not persuasive.

Regarding claim 101, Applicant argues that Hedrick does not teach the elements of establishing a wireless transmission link with a portable data unit carried by an individual when the portable data unit is within a predetermined distance of the gaming terminal for a predetermined period of time, and an operation of the gaming terminal is modified differently depending upon at least one of the predetermined distance and the predetermined period of time. However the claimed elements have been addressed above within the rejection. It is also noted that all portable wireless devices inherently requires a predetermined distance and a predetermined time to establish a wireless transmission link with the host machine. All wireless devices have distance limitations. The wireless devices must be turned on in order for the wireless devices to establish a connection. Additionally all wireless devices require a predetermined time to send information within the wireless connection. Furthermore, operation is modified when the host device receives information from the portable device. Receiving information is considered to be an operation.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jasson H. Yoo whose telephone number is (571)272-5563. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JHY

  
XUAN M. THAI  
SUPERVISORY PATENT EXAMINER  
TC 3714